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IN THE
COURT OF APPEALS OF INDIANA

GUY HUESTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0603-CR-157
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert Altice, Judge
Cause No. 49G02-0501-FA-011505

November 28, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Guy Hueston appeals his convictions for three counts of class A felony Child Molesting[1] and one count of class C felony Child Molesting.[2] Specifically, Hueston raises numerous arguments, which we restate as: (1) the trial court committed reversible error when it instructed the jury that the State was not required to prove penetration to convict Hueston of child molesting by deviate sexual conduct, (2) the trial court committed fundamental error by admitting statements Hueston made to the police after his arrest, (3) the trial court committed fundamental error by failing to adequately admonish the jury or declare a mistrial after the prosecutor made improper comments during her rebuttal closing argument, and (4) the trial court abused its discretion when it relied on an inappropriate aggravating circumstance, leading to an inappropriate sentence. Finding no error, we affirm the judgment of the trial court.

FACTS

Hueston has a daughter, S.H., who was twelve years old at the time of the following events. Because Hueston and S.H.'s mother are divorced, S.H. and her brother visit Hueston's Indianapolis home every other weekend. In December 2003, as Hueston and S.H. were watching television from a couch in Hueston's home, Hueston pulled S.H.'s head toward his covered penis and told her to perform fellatio on him. S.H. refused. After briefly being called into the kitchen by his girlfriend, Hueston returned to the couch, pulled his penis out of his pants, and again pushed S.H.'s head toward his penis and told her to perform fellatio. Hueston's penis touched S.H.'s mouth, but she refused to perform fellatio on him.

[1] Ind. Code § 35-42-4-3

On the second incident, which allegedly occurred between April 24, 2004, and June 1, 2004, S.H. was again watching television on the couch in Hueston's residence. Hueston sat on the couch, laid on top of S.H., placed his hand in her pants, inserted his finger into her vagina, and moved his finger around. Hueston stopped when he heard his girlfriend's vehicle arrive and when S.H.'s brother called for help from the computer room.

On the third incident, which allegedly occurred between April 24, 2004, and June 1, 2004, S.H. was watching television on the couch when Hueston grabbed her hand and placed it underneath his pants on his penis. For three to five minutes, Hueston moved S.H.'s hand around on his penis and inserted his finger into S.H.'s vagina.

On the fourth incident, which allegedly occurred between June 1, 2004, and June 30, 2004, Hueston took S.H. into his bedroom, placed her on the bed, removed his pants, and attempted to have anal sex with her. S.H. testified that Hueston's penis touched her buttocks but that it was "just kind of there" and that "[i]t felt nasty." Tr. p. 46. Hueston told S.H. that if she ever told anyone about these incidents he would hurt her.

After allegations of the molestation were reported to the authorities, Detective Chris Lawrence of the Indianapolis Police Department contacted Hueston on January 25, 2005, and asked him to come to the police station for an interview. Hueston drove to the police station, was fully advised of his Miranda[3] rights, signed a waiver, and voluntarily agreed to talk to Detective Lawrence. Hueston told Detective Lawrence that S.H. touched his penis with her

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[2] Id.

[3] Miranda v. Arizona, 384 U.S. 436 (1966).

hand, that he had inserted his finger into S.H.'s vagina on one or two occasions, that he had tried to make S.H. perform fellatio on him but that he did not know if his penis had touched her mouth, and that he had tried to stick his penis into S.H.'s anus but that he lost his erection because he "knew it was wrong." State's Ex. 2 at 44.

On January 26, 2005, the State charged Hueston with three counts of class A felony child molesting and one count of class C felony child molesting. A two-day jury trial began on January 30, 2006, and the jury found Hueston guilty as charged. On February 22, 2006, the trial court sentenced Hueston to thirty years for each of the three class A felony child molesting convictions and to four years for the class C felony conviction. The trial court ordered that the thirty-year sentences for Counts I and II run concurrently with each other and that the thirty-year sentence for Count III run consecutively to the sentence for Count II. The trial court also ordered the four-year sentence for the class C felony conviction to run consecutively to the sentence for Count III, for an aggregate sentence of sixty-four years. Hueston now appeals.

DISCUSSION AND DECISION

I. Jury Instruction 11

Hueston first argues that the trial court committed reversible error when it instructed the jury that the State was not required to prove penetration to convict Hueston of child molesting by deviate sexual conduct. Specifically, Hueston argues that the State was required to prove penetration and he asks us to interpret Indiana Code section 35-41-1-9(1) to reflect the penetration requirement.

Jury instructions should inform the jury regarding the law applicable to the facts without being misleading and should enable the jury to understand the case and arrive at a just, fair, and correct verdict. Williams v. State, 755 N.E.2d 1128, 1131 (Ind. Ct. App. 2001). The manner of instructing the jury lies within the sound discretion of the trial court and we will not reverse the trial court's ruling unless the charge to the jury misstates the law or is otherwise misleading. Lewis v. State, 759 N.E.2d 1077, 1080-81 (Ind. Ct. App. 2001). Jury instructions must be considered as a whole and in reference to each other, and even an erroneous instruction will not be error if the instructions taken as a whole do not misstate the law or otherwise mislead the jury. Id.

Hueston objected to Jury Instruction 11 at trial and now argues that we should reverse his convictions because the instruction misstates the law. Jury Instruction 11 provides that "Proof of penetration is not required to establish 'deviate sexual conduct' when the allegation is that the act involved the sex organ of one person and the mouth or anus of another person." Appellant's App. p. 121. Hueston argues that "[n]umerous appellate decisions stand for the proposition that proof of penetration is required to establish that a defendant engaged in deviate sexual conduct" and that the legislature only intended for the statute to apply to acts where penetration occurred. Appellant's Br. p. 13-14.

As we held in Wisneskey v. State, "Although evidence of the penetration of a child's anus with a defendant's penis will establish deviate sexual conduct, the State is not required to introduce evidence of penetration. Instead, the State need only establish that the defendant committed a sex act with his penis involving the child's anus." 736 N.E.2d 763, 764 (Ind. Ct.

App. 2000) (citing Crabtree v. State, 547 N.E.2d 286, 290-91 (Ind. Ct. App. 1989)). Hueston directs us to two cases in support of his argument that proof of penetration is required for a conviction based on deviate sexual conduct. However, these cases both hold that evidence of penetration is sufficient to support a conviction for deviate sexual conduct; neither case stands for the proposition that penetration is required for a conviction. Harding v. State, 457 N.E.2d 1098, 1101 (Ind. 1984); Johnson v. State, 837 N.E.2d 209, 214 (Ind. Ct. App. 2005), trans. denied.

Three of Hueston's four convictions involve "deviate sexual conduct," which is defined as an act involving "(1) a sex organ of one person and the mouth or anus of another person; or (2) the penetration of the sex organ or anus of a person by an object." Ind. Code § 35-41-1-9. Hueston asks us to interpret the first subsection of the statute to require the penetration requirement because that requirement is mentioned in the second subsection of the statute. The express language of a statute and the rules of statutory construction control statutory interpretation. Chavis v. Patton, 683 N.E.2d 253, 257 (Ind. Ct. App. 1997). When interpreting the words of a single section of a statute, we must construe them with due regard for all other sections of the act and with regard for the legislative intent to carry out the spirit and purpose of the act. Id. We presume that the legislature intends for us to apply the language in a logical manner consistent with the statute's underlying policy and goals. Id.

Indiana Code section 35-41-1-9(1) does not require proof of penetration because, as we have previously held, the legislature intended for the statute to cover acts that include any contact between the defendant's penis and the victim's mouth or anus. See Downey v. State,

726 N.E.2d 794, 798 (Ind. Ct. App. 2000) (holding that the State's evidence that the defendant's penis touched the victim's "buttocks" was insufficient to sustain a conviction for deviate sexual conduct because "[t]o hold that a person could commit deviate sexual conduct without contact with the anus would yield a result surely not intended by the legislature"). Furthermore, the second subsection of the statute, which includes the penetration requirement, demonstrates that the legislature included the term "penetration" in the definition when it intended that requirement. We have previously held that "it is apparent from the language of subsection (2) that when the legislature contemplated an element of penetration it expressly so provided." Crabtree, 547 N.E.2d at 291. Therefore, we decline to read the penetration requirement into the first subsection of the "deviate sexual conduct" definition because that construction was not the legislature's intent.

In light of these conclusions, we find that Jury Instruction 11 was not an erroneous statement of the law because, under Indiana Code section 35-41-1-9(1), penetration is not required to establish deviate sexual conduct. Therefore, Jury Instruction 11 did not mislead or confuse the jury, and we decline to reverse Hueston's convictions on this ground.[4]

II. Hueston's Statements

Hueston next argues that the trial court committed fundamental error when it violated his constitutional rights by admitting his incriminating statements at trial. Specifically, Hueston argues that he invoked his right to remain silent and that Detective Lawrence's

[4] Hueston goes on to argue that the State's evidence was insufficient to sustain his convictions because the State did not present evidence that Hueston's penis penetrated S.H.'s mouth or anus. Inasmuch as we have already concluded that the State was not required to present evidence of penetration to prove "criminal deviate conduct," we need not address this argument.

implied promises and coercive tactics overcame his will, rendering the statements involuntary.

When a defendant challenges the admissibility of his statement, the State must prove beyond a reasonable doubt that the defendant voluntarily waived his rights and that his confession was voluntarily given. Miller v. State, 770 N.E.2d 763, 767 (Ind. 2002). Following such a challenge, whether to admit the statement is left to the sound discretion of the trial court. Horan v. State, 682 N.E.2d 502, 509 (Ind. 1997). A trial court's finding of voluntariness will be upheld if the record discloses substantial evidence of probative value that supports the trial court's decision. Kahlenbeck v. State, 719 N.E.2d 1213, 1216 (Ind. 1999). We will not reweigh the evidence, and conflicting evidence is viewed in a light most favorable to the trial court's ruling. Haak v. State, 695 N.E.2d 944, 948 (Ind. 1998).

The voluntariness of a statement is determined by examining the totality of the circumstances surrounding the interrogation. Clark v. State, 808 N.E.2d 1183, 1191 (Ind. 2004). Relevant factors include the length, location, and continuity of the interrogation and the maturity, education, physical condition, and mental health of the defendant. Id. In making its determination, the trial court weighs the evidence to ensure that a confession was not obtained "through inducement, violence, threats or other improper influences so as to overcome the free will of the accused." Ellis v. State, 707 N.E.2d 797, 801 (Ind. 1999). A confession is inadmissible if it is obtained by promises of mitigation or immunity, but vague and indefinite statements by the police that it would be in a defendant's best interest if he cooperated do not render a subsequent confession inadmissible. Clark, 808 N.E.2d at 1191;

Turpin v. State, 400 N.E.2d 1119, 1121 (Ind. 1980) (holding that police officers' vague statements that they would "[see] what they could do" for the accused did not render the confession inadmissible). Where a promise of leniency stems from a defendant's specific request for leniency as a precondition for making a statement, the voluntariness of the statement is not induced by misconduct. Bivins v. State, 642 N.E.2d 928, 940-41 (Ind. 1994).

Initially, we note that Hueston acknowledges that he did not object at trial to the admission of his statement. Tr. p. 66. Failure to make a contemporaneous objection to the admission of evidence at trial results in waiver of the error upon appeal. Jackson v. State, 735 N.E.2d 1146, 1152 (Ind. 2000). To circumvent waiver, Hueston must show that the admission of his statements amounted to fundamental error. Prewitt v. State, 761 N.E.2d 862, 871 (Ind. Ct. App. 2002). A fundamental error is a substantial, blatant violation of the basic principles of due process that renders the trial unfair to the defendant. Stafford v. State, 736 N.E.2d 326, 332 (Ind. Ct. App. 2000). Our Supreme Court has stressed that the fundamental error exception is "extremely narrow." Mitchell v. State, 726 N.E.2d 1228, 1236 (Ind. 2000). To be fundamental error, "an error must be so prejudicial to the rights of the defendant as to make a fair trial impossible." Mitchell v. State, 725 N.E.2d 1228, 1236 (Ind. 2000).

While Hueston does not argue that the initial waiver of his Miranda rights was invalid, he asserts that he reinvoked his right to remain silent when he told Detective Lawrence that "you ain't gonna let me go until I tell you what you want?" State's Ex. 2 at 22. An

invocation of Miranda rights must be clear and unequivocal and, in determining whether a person has asserted his or her rights, the defendant's statements are considered as a whole. Clark, 808 N.E.2d at 1190. To invoke his right to remain silent, a person must do more than express reluctance to talk. Taylor v. State, 689 N.E.2d 699, 705 (Ind. 1997). For example, a statement that "I'm through with this," followed by continued dialogue without pausing or indicating that the defendant would no longer respond, does not unambiguously assert the right to remain silent. Haviland v. State, 677 N.E.2d 509, 514 (Ind. 1997).

After Hueston's comment, Detective Lawrence immediately responded, "You're free to leave anytime you want. You know you signed your rights and I mean you understood them[,] right?" State's Ex. 2 at 22. Hueston responded affirmatively and then continued to talk to Detective Lawrence. We find that Hueston's statements, taken as a whole, were not an invocation of his right to remain silent because, in response to Detective Lawrence's comment, Hueston asserted that he understood his rights and then continued to talk to Detective Lawrence. Clark, 808 N.E.2d at 1190; Haviland, 677 N.E.2d at 514.

Hueston argues that Detective Lawrence implied promises and used coercive tactics to overcome his will, rendering his statements involuntary. The only statement to which Hueston directs is a comment Detective Lawrence made in response to Hueston's inquiry about potential jail time: "That's up to the judge . . . Now you come in here and you tell me and you're up front with what happened to me that says something, you know, as far as me saying this is what you're getting for it [pause] I can't do that." State's Ex. 2 at 24. This comment by Detective Lawrence does not amount to a specific promise of leniency and was

made after Hueston inquired about potential jail time. Detective Lawrence's comment did not render Hueston's statement involuntary because Detective Lawrence responded to the inquiry with a vague statement articulating that he was unable to give Hueston a specific answer because "[t]hat's up to the judge." Id. at 24; see also Clark, 808 N.E.2d at 1191; Bivins v. State, 642 N.E.2d at 940-41.

In light of our findings that Hueston made his statement voluntarily and did not reinvoke his right to remain silent after his Miranda waiver, we hold that the trial court did not commit fundamental error when it admitted Hueston's statement at trial.

III. Prosecutorial Misconduct

Hueston next argues that the trial court committed fundamental error when it failed to admonish the jury or declare a mistrial after the prosecutor made certain comments during closing arguments. Specifically, Hueston argues that the prosecutor made an improper comment regarding Hueston's right to a jury trial and the State's burden of proof and that the trial court did not take adequate steps to rectify the prosecutor's misconduct.

Initially, we observe that Hueston has waived this argument on appeal. To preserve an issue regarding the propriety of a closing argument for appeal, a defendant must do more than simply make a prompt objection to the statement. Gasper v. State, 833 N.E.2d 1036, 1042 (Ind. Ct. App. 2005), trans. denied. "The defendant must also request an admonishment, and if further relief is desired, defendant must move for a mistrial. Failure to request an admonishment results in a waiver of the issue for appellate review." Flowers v. State, 738 N.E.2d 1051, 1058 (Ind. 2000). While Hueston did object to the State's comment,

he neither requested an admonishment nor a mistrial and has, therefore, waived this issue on appeal. Id. To circumvent waiver, Hueston must show that the trial court's lack of action after the alleged prosecutorial misconduct amounted to fundamental error. Prewitt, 761 N.E.2d at 871. As noted above, our Supreme Court has stressed that the fundamental error exception is "extremely narrow." Mitchell, 726 N.E.2d at 1236. To be fundamental error, "an error must be so prejudicial to the rights of the defendant as to make a fair trial impossible." Mitchell, 725 N.E.2d at 1236.

Although often phrased in terms of grave peril, a claim of improper argument to the jury is measured by the probable persuasive effect of any misconduct on the jury's decision and whether there were repeated instances of misconduct that would evidence a deliberate attempt to improperly prejudice the defendant. Ritchie v. State, 809 N.E.2d 258, 268-69 (Ind. 2004). When reviewing a claim of prosecutorial misconduct, we must first consider whether the prosecutor engaged in misconduct. Williams v. State, 724 N.E.2d 1070, 1080 (Ind. 2000). We must then consider whether the alleged misconduct placed the defendant in a position of grave peril to which he should not have been subjected. Id. In judging the propriety of the prosecutor's remarks, we consider the statement in the context of the argument as whole. Hollowell v. State, 707 N.E.2d 1014, 1024 (Ind. Ct. App. 1999). It is proper for a prosecutor to argue both law and fact during final argument and propound conclusions based upon his analysis of the evidence. Id. A prosecutor is entitled to respond to allegations and inferences raised by the defense even if the prosecutor's response would otherwise be objectionable. Lopez v. State, 527 N.E.2d 1119, 1125 (Ind. 1988).

Here, Hueston argues that the prosecutor made the following improper comment during her rebuttal closing argument:

> I don't want you to think that there's some big piece of evidence that's lacking and that there's a reason that you are here because something that's missing. There's not. Everybody has a right to a jury trial. Everybody. Regardless of what the statements are, regardless of what the evidence is, they just do. And so here we are. And that's really all it is. It is not a big vast conspiracy. There's not a big whole [sic]. There's nothing. It is exactly as simple as it seems. Guy Hueston is entitled to a jury trial. But he is not entitled to reasonable doubt.

Tr. p. 107. Hueston contends that the prosecutor's comments improperly attacked two of Hueston's fundamental rights: (1) his right to a jury trial and (2) his right to have the State prove his guilt beyond a reasonable doubt. After Hueston objected, the trial court responded, "Well, the jury's going to get my instructions and they will note that Mr. Hueston is given -- the requirement that the State must prove their case beyond a reasonable doubt." Id. at 108. Hueston did not request a further admonishment or a mistrial, the prosecutor made no further comments to the jury, and the trial court immediately began to read the jury instructions to the jury.

We find that the prosecutor's comment, taken as a whole, was not an attack on Hueston's right to a jury trial because the comment was in direct response to Hueston's closing argument. During closing, Hueston suggested that he had proceeded to trial despite his admissions to Detective Lawrence because the State lacked crucial evidence to prove his guilt. During her rebuttal argument, the prosecutor merely informed the jury that a defendant does not receive a jury trial merely because there may be some evidence lacking; instead, "[e]verybody has a right to a jury trial." Id. at 107. While this statement is an

overgeneralization of criminal law,[5] the prosecutor made this valid comment in direct response to Hueston's closing argument. Lopez, 527 N.E.2d at 1125. Therefore, the trial court's inaction did not amount to fundamental error.

We do, however, take issue with the prosecutor's remark that "[Hueston] is not entitled to reasonable doubt." The State argues that the comment is "technically correct" because, while Hueston is entitled to a presumption of innocence, that presumption ends when the "State proves the crime beyond a reasonable doubt." Appellee's Br. p. 18. Even if the prosecutor intended to make this flawed point, such a remark is inappropriate in light of the well-settled reasonable doubt burden that falls on the State in criminal cases and remains with the State throughout the trial. However, in response to Hueston's objection, the trial court noted that the jury instructions—which the trial court immediately read to the jury after Hueston's objection—made it clear that it was the State's burden to prove Hueston's guilt beyond a reasonable doubt. While the prosecutor's comment may have been inappropriate, we find that the comment did not place Hueston in a position of grave peril because the trial court made the State's burden of proof clear to the jury. Williams, 724 N.E.2d at 1080. Therefore, the trial court's lack of further action did not amount to fundamental error.

IV. Sentencing

Hueston argues that the trial court improperly sentenced him to an aggregate term of sixty-four years. Specifically, Hueston argues that the trial court abused its discretion by imposing consecutive sentences when it relied on an inappropriate aggravating circumstance.

[5] A defendant's right to a jury trial hinges on whether the maximum sentence for the charged crime is greater than six months. Duncan v. Louisiana, 391 U.S. 145, 159-60 (1968); Holly v. State, 681 N.E.2d 1176, 1177

Alternatively, Hueston argues that if the trial court relied on proper factors, the aggregate sentence is inappropriate in light of his character and the nature of his offenses.

A. Aggravating and Mitigating Circumstances

Hueston argues that the trial court abused its discretion when it found his prior felony reckless homicide conviction to be an aggravating circumstance because the conviction was two decades old. Hueston further argues that the trial court should have considered his steady employment to be a significant mitigating factor at sentencing.

Sentencing determinations are within the sound discretion of the trial court, and we will only reverse for an abuse of discretion. Krumm v. State, 793 N.E.2d 1170, 1186 (Ind. Ct. App. 2003). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. Id. In a sentencing statement, a trial court must identify all significant aggravating and mitigating factors, explain why such factors were found, and balance the factors in arriving at the sentence. Bryant v. State, 841 N.E.2d 1154, 1156 (Ind. 2006).

At sentencing, the trial court found Hueston's prior felony conviction for reckless homicide to be a significant aggravating circumstance. As for mitigating circumstances, the trial court found that "none have really been proposed and the Court searched long and hard to find those and was unable to do so." Tr. p. 125.

Hueston argues that the trial court should not have considered his previous felony conviction for reckless manslaughter to be an aggravating circumstance because the

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(Ind. Ct. App. 1997).

conviction was twenty years old. A criminal record, in and of itself, is sufficient to support an enhanced sentence. Bradley v. State, 765 N.E.2d 204, 209 (Ind. Ct. App. 2002). Only one valid aggravating circumstance is required to enhance a sentence. Id. While the chronological remoteness of a defendant's prior criminal history should be taken into account, "we will not say that remoteness in time, to whatever degree, renders a prior conviction irrelevant." Buchanan v. State, 767 N.E.2d 967, 972 (Ind. 2002). The remoteness of prior criminal history does not preclude the trial court from considering it as an aggravating circumstance. Id. The significance of the defendant's criminal history varies based on the gravity, nature, and number of prior offenses as they relate to the current offense. Cotto v. State, 829 N.E.2d 520, 526 (Ind. 2005).

Hueston was previously convicted for reckless homicide after he fired a gun at a woman, killing her. While that conviction is twenty years old, it is not irrelevant because it shows Hueston's continued disregard for the welfare of others, a trait pertinent to his current convictions for child molesting. Therefore, we cannot say that the trial court abused its discretion when it considered Hueston's criminal history to be an aggravating factor and ordered two of Hueston's convictions to run consecutively to the remaining two sentences.

Hueston also argues that the trial court abused its discretion when it did not consider his employment to be a significant mitigating circumstance. A finding of mitigating circumstances lies within the trial court's discretion. Widener v. State, 659 N.E.2d 529, 533 (Ind. 1995). The trial court is not obligated to explain why it did not find a factor to be significantly mitigating. Chambliss v. State, 746 N.E.2d 73, 78 (Ind. 2001). And the

sentencing court is not required to place the same value on a mitigating circumstance as does the defendant. Beason v. State, 690 N.E.2d 277, 283-84 (Ind. 1998).

Hueston's allegation that the trial court failed to find his employment history to be a mitigating circumstance requires him to establish that the mitigating evidence is both significant and clearly supported by the record. Dowdell v. State, 720 N.E.2d 1146, 1154 (Ind. 1999). Hueston has not satisfied this burden because he did not present evidence to the trial court to support his claim that his "steady employment for four years" should be significantly mitigating. Tr. 125. In fact, Hueston's attorney noted that he did not present subpoenas from Hueston's employment records because "I didn't see what I felt was helpful to the Defense." Tr. p. 125. Therefore, the trial court did not abuse its discretion by not finding Hueston's employment history to be a significant mitigating factor. See Bennett v. State, 787 N.E.2d 938, 948 (Ind. Ct. App. 2002) (holding that the trial court did not abuse its discretion by not finding defendant's work history to be a significant mitigating factor when defendant did not present specific employment history, performance reviews, or attendance records at sentencing).

B. Appropriateness

Hueston argues that the sixty-four year aggregate sentence is inappropriate in light of the nature of the offenses and his character. Specifically, he argues that the trial court imposed an inappropriate sentence by ordering two of the sentences to run consecutively because Hueston is not among the worst offenders.

We initially note that Hueston received the presumptive sentence on all four counts and the trial court ordered two of the sentences—one sentence for thirty years and one sentence for four years—to run consecutively to the two remaining thirty-year sentences. While the maximum sentence Hueston could have received for his four convictions was one hundred and fifty-four years, the trial court sentenced him to an aggregate term of sixty-four years.

Our court has the constitutional authority to revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is "inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). However, sentence review under Appellate Rule 7(B) is very deferential to the trial court's decision, Martin v. State, 784 N.E.2d 997, 1013 (Ind. Ct. App. 2003), and we refrain from merely substituting our judgment for that of the trial court, Foster v. State, 795 N.E.2d 1078, 1092 (Ind. Ct. App. 2003).

Regarding the nature of Hueston's offenses, Hueston molested his twelve-year-old daughter on four escalating occasions. Hueston initially attempted to force S.H. to perform fellatio on him and molested her two more times before his acts peaked with his attempt to have anal sex with her. Instead of being a loving father, Hueston made the repeated decision to place his own sexual desires above the needs of his daughter. Furthermore, Hueston molested S.H. at his residence, a home S.H. visited every other weekend and a place where she should have been able to feel safe.

Hueston's offenses also shed light on his character. His choice to molest S.H. on numerous occasions demonstrates his inability to put his daughter's needs above his own. As previously noted, Hueston's prior conviction for felony reckless manslaughter stems from an incident where Hueston fired a gun at a woman, killing her. Hueston's prior conviction and the convictions at issue show his character and his indifference to the welfare and safety of others.

Hueston directs our attention to Walker v. State in an attempt to show that his sentence is inappropriate. 747 N.E.2d 536, 537 (Ind. 2001) (holding that Walker's eighty-year sentence for two child molesting convictions was manifestly unreasonable because defendant was not among the most culpable offenders and the trial court imposed two forty-year sentences and ordered that the sentences run consecutively). Hueston argues that his offenses and character are akin to the defendant in Walker; therefore, we should also find his sentence inappropriate. However, unlike the defendant in Walker, Hueston was convicted of four child molesting counts, was the victim's father, subjected the victim to various sexual acts, and has a history of prior criminal behavior. And unlike the defendant in Walker, who was sentenced to eighty years out of a statutory maximum of one hundred years, Hueston's aggregate sentence is less than half of the statutory maximum. Therefore, we find Walker to be distinguishable.

In light of the nature of the offenses and Hueston's character, we cannot conclude that his sixty-four year sentence was inappropriate.

The judgment of the trial court is affirmed.

VAIDIK, J., and CRONE, J., concur.